



BRIAN ZIMMERMAN
DIRECT DIAL: 713-212-2651
bzimmerman@spencerfane.com

*Board Certified Civil Trial Law
Texas Board of Legal Specialization*

May 22, 2025

United States Magistrate Judge
Yvonne Ho
515 Rusk Street, Room 7525
Houston, Texas 77002

Re: Civil Action No. 4:23-cv-00928; *Katherine Monson v. McClenny Moseley & Associates PLLC et al*; In the United States District Court for the Southern District of Texas, Houston Division.

Dear Magistrate Judge Ho:

Pursuant to the Court's Order dated January 27, 2025, Equal Access Justice Fund LP and EAJF ESQ Fund LP (the "EAJF Parties") provides its letter brief based on the Texas Supreme Court's decision in *Pohl v. Cheatham* issued on May 9, 2025. *Pohl v. Cheatham*, No. 23-0045, Slip Op. (Tex. May 9, 2025). Please accept this letter brief on behalf of the EAJF Parties.

Plaintiff Monson filed this case alleging civil liability for barratry against several defendants, including the EAJF Parties. The EAJF Parties answered and cross-claimed against Defendant Tort Network, LLC d/b/a Velawcity ("Tort Network"), alleging unjust enrichment. (Doc # 65). The EAJF Parties also cross-claimed against individuals Zachary John Moseley ("Moseley") and James McClenny ("McClenny") for breach of loan guaranty agreements. (Doc. # 65). On behalf of Defendant MMA Law Firm, Moseley filed a bankruptcy petition and consequently, all claims against Defendant MMA are stayed. This District Court dismissed Plaintiff's claims against the EAJF Parties on December 6, 2024 (Doc # 125), adopting Magistrate Judge Ho's Memorandum and Recommendation of September 19, 2004 (Doc. #89).



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The Texas Supreme Court's opinion in *Pohl* is dispositive on all of Plaintiff Monson's claims against the defendants. In *Pohl*, the Texas Supreme Court determined that Texas Government Code § 82.0651(a) does not apply extraterritorially. That is to say the statute does not apply to alleged barratry where the conduct occurred outside the state of Texas. Plaintiff Monson's original claims for barratry are precluded by *Pohl* because her claims are based upon allegations of attorney conduct that occurred—if at all—outside of the state of Texas.

However, *Pohl* does not impact the EAJF parties' remaining cross actions against Defendants Tort Network, Moseley, and McClenny. For the following reasons, these cross actions should remain. Leaving aside the fact that the EAJF Parties' claims against MMA have been stayed due to the bankruptcy filing, those claims do not allege violations of the civil barratry statute. Second, the EAJF Parties' claims against Moseley and McClenny are breach of contract claims for failure to honor their individual personal guarantees on a commercial loan. Mr. McClenny's and Mr. Moseley's personal obligation to the EAJF Parties arise from contract and are not based on application or extraterritorial reach of Texas' civil barratry statute. Third, the EAJF Parties' claim against Tort Network is one for unjust enrichment which does not invoke or rely on the barratry statute. The EAJF Parties' claims against Tort Network are common law tort claims based on the allegation that Tort Network took and misused EAJF's funds such that it would be unjust for Tort Network to retain the benefit of them. Importantly, none of the EAJF Parties' cross claims rely on any violation of Section 82.0651(a). Accordingly, the *Pohl* decision does not affect the EAJF Parties' cross-claims.

The EAJF Parties therefore ask the Court to retain their cross-claims against Tort Network, Moseley, and McClenny, regardless of whether it dismisses Monson's remaining claims against the original defendants.



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As indicated, the undersigned is providing a copy of this correspondence to all counsel of record.

Sincerely,

/s/ Brian W. Zimmerman

Brian W. Zimmerman

Texas Bar No. 00788746

Fed ID. 18979

bzimmerman@spencerfane.com

Frederick T. Johnson

Texas Bar No. 00785429

Fed ID. 15420

fjohnson@spencerfane.com

Brian Poldrack

Texas Bar No. 24046614

Fed ID. 617541

bpoldrack@spencerfane.com

3040 Post Oak Blvd., Suite 1400

Houston, TX 77056

Telephone: 713-552-1234

Facsimile: 713-963-0859

ATTORNEYS FOR DEFENDANTS

EQUAL ACCESS JUSTICE FUND LP

AND EAJF ESQ FUND LP

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, on May 22, 2025.

/s/ Brian W. Zimmerman

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